IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6700 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.K. RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION,

Versus

AMAD HASAN SHAPA

Appearance:

MR HARDIK C RAWAL for Petitioner

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 25/04/2000

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. By means of filing this writ petition, the petitioner-Gujarat State Road Transport Corporation

[hereinafter referred to as, `the Corporation'] seeks to challenge the Award dated 11th June, 1986 made by the Labour Court, Rajkot in Reference (LCR) No. 1548 of 1985 wherein the Labour Court has been pleased to grant reinstatement to the respondent workman with continuity in service but without payment of backwages for the interim period.

3. This Court [Coram : M/s. Justice R.C Mankad & B.S Kapadia, JJ.] while admitting the matter on 30.12.1986, had issued rule and granted ad-interim relief in terms of paragraph 9 (B) of the petition.

4. It is pertinent to note that prior to filing of the present writ petition, the Corporation had reinstated the respondent workman in service as a Conductor on 5th November, 1986 at Bhachau Depot, and subsequently, on his reaching the age of superannuation, the respondent retired from service on 30.6.1999 from Mundra Depot of the Corporation.

5. The brief facts of the present petition are that on 21.5.1984, the respondent was put on duty in a Bus going from Anjar to Khirsara and that bus was checked by the Checking Squad at Lakhapar wherein it was found that the workman though had collected luggage charges from one passenger but did not issue ticket to him. He was, therefore, served with a chargesheet and after departmental inquiry he was found guilty of misappropriation of the public money and as a result thereof, he was dismissed from service. The said order of dismissal came to be challenged by the respondent workman before the Labour Court at Rajkot in a Reference No. (LCR) 1548 of 1985. The respondent workman was examined vide Exh. 23 wherein, according to his version, the bus was checked at a distance of 6 to 8 kms. from Lakapar and at that time there were 67 passengers in the bus and out of them 29 were going to Ambapar. The respondent workman has stated that the passenger concerned paid him Rs. 2/= and not Rs. 3.35 paise but she did not stated that she had a chargeable luggage with her. The learned Labour Judge has considered all the aspects of the matter and also considered the findings given by the Inquiry Officer which is at Exh. 30 and the Inquiry Officer has considered the defence of the workman that the passenger concerned had paid him Rs. 2/= and not Rs. 3.35p., as alleged. However, the Inquiry Officer has disregarded the defence of the respondent workman on the ground that passenger has no reason to tell lie. However, the Labour Court has considered the theory of the defence of the workman which was found to

be consistent and ultimately, the Labour Court has come to the conclusion that for such minor misconduct, the highest punishment of dismissal is quite disproportionate and at the most, the workman is liable for the misconduct of negligence for not issuing the luggage ticket and for not recovering the luggage charges. Therefore, while exercising the powers under Sec. 11 (A) of the Industrial Disputes Act, 1947, the Labour Court has considered his past record wherein, in all 54 misconducts are found to have been committed and against the same, sufficient punishment have been imposed. Therefore, while considering the evidence available on record, the Labour Court has rightly considered that denial of total backwages for the interim period will be sufficient punishment to the respondent workman. The Labour Court has also considered in detail the findings given by the Inquiry Officer and also come to the conclusion that the evidence of the Reporter would be a hearsay evidence, and therefore, the fact of payment of amount by the passenger to the workman concerned normally should have been proved even by the evidence of the Reporter but in the present case, the circumstances creates a reasonable doubt and the passenger was an illiterate lady. Further, the cash was not checked by the Checking Squad and there was a shortage of Rs. 1.60 p. in the cash when the workman handed over cash in the Depot. Now, considering all these aspects of the matter, according to my opinion, the Labour Court has not committed any error in exercising powers under Sec. 11-A of the Industrial Disputes Act, 1947.

In the present matter, the respondent workman was reinstated in service on 4th September, 1986 subject to the result of this petition, and he has retired from service on 30th June, 1999. Therefore, considering the overall facts-situation of the case, the present writ petition deserves to be dismissed on the grounds aforesaid.

In the result, this petition is dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated. The petitioner-Corporation is directed to implement the Award passed by the Labour Court, Rajkot dated 11.6.1986 in Reference No. (LCR) 1548 of 1985 and arrange to release all yearly increments due to the petitioner in the cadre of a Conductor from the date of his reinstatement in service and grant him all the retiral benefits within a period of two months from the date of receipt of certified copy of this judgment.

{H.K Rathod, J.}

Prakash*